

**KERSHAW COUNTY
ORDINANCE NO. 276.2016**

AN ORDINANCE AUTHORIZING (1) THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT BY AND BETWEEN KERSHAW COUNTY, SOUTH CAROLINA (THE "COUNTY") AND BETHUNE NONWOVENS, INC., ACTING FOR ITSELF, ONE OR MORE AFFILIATES, AND/OR OTHER PROJECT SPONSORS (COLLECTIVELY, THE "COMPANY"), PURSUANT TO WHICH THE COUNTY SHALL COVENANT TO ACCEPT CERTAIN NEGOTIATED FEES IN LIEU OF AD VALOREM TAXES WITH RESPECT TO THE ESTABLISHMENT AND/OR EXPANSION OF CERTAIN FACILITIES IN THE COUNTY (THE "PROJECT"); (2) THE BENEFITS OF A MULTI-COUNTY INDUSTRIAL OR BUSINESS PARK TO BE MADE AVAILABLE TO THE COMPANY AND THE PROJECT; (3) CERTAIN SPECIAL SOURCE REVENUE CREDITS IN CONNECTION WITH THE PROJECT; AND (4) OTHER MATTERS RELATING THERETO.

WHEREAS, Kershaw County, South Carolina (the "County"), acting by and through its County Council (the "Council"), is authorized and empowered under and pursuant to the provisions of the Code of Laws of South Carolina 1976, as amended (the "Code"), and particularly Title 12, Chapter 44 of the Code (the "Negotiated FILOT Act") and Title 4, Chapter 1 of the Code (the "Multi-County Park Act" or, as to Section 4-1-175 thereof, the "Special Source Act", and, together with the Negotiated FILOT Act, the "Act") and by Article VIII, Section 13(D) of the South Carolina Constitution: (i) to enter into agreements with certain investors to construct, operate, maintain, and improve certain projects through which the economic development of the State of South Carolina (the "State") will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ the manpower, agricultural products, and natural resources of the State; (ii) to covenant with such investors to accept certain fee in lieu of *ad valorem* tax ("FILOT") payments, including, but not limited to, negotiated FILOT payments made pursuant to the Negotiated FILOT Act, with respect to a project; (iii) to permit investors to claim special source revenue credits against their FILOT payments ("Special Source Credits") to reimburse such investors for expenditures in connection with infrastructure serving the County or improved or unimproved real estate and personal property including machinery and equipment used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County ("Special Source Improvements"); and (iv) to create, in conjunction with one or more other counties, a multi-county industrial or business park in order to afford certain enhanced income tax credits to such investors and to facilitate the grant of Special Source Credits; and

WHEREAS, Bethune Nonwovens, Inc., a corporation organized and existing under the laws of the State of South Carolina, acting for itself, one or more affiliates, and/or other project sponsors (collectively, the "Company"), is considering the establishment and/or expansion of

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JONATHAN D. HARRIS
CLERK OF COUNTY
KERSHAW COUNTY, SC

certain manufacturing and related facilities at one or more locations in the County (the "Project"), and anticipates that, should its plans proceed as expected, they will invest, or caused to be invested, in the aggregate, at least \$55,000,000 in the Project and will create, or cause to be created, in the aggregate, at least 29 new, full-time jobs in the County; and

WHEREAS, based on information provided to the County by the Company, the County has determined that the Project will subserve the purposes of the Act and has made certain findings pertaining thereto in accordance with the Act; and

WHEREAS, in accordance with such findings and determinations, and in order to induce the Company to locate the Project in the County, the Council adopted a Resolution on March 8, 2016 (the "Inducement Resolution"), whereby the County agreed to provide the benefits of a negotiated FILOT, a multi-county industrial or business park, and Special Source Credits with respect to the Project; and

WHEREAS, the County and the Company have agreed to specific terms and conditions of such arrangements as set forth herein and in a Fee in Lieu of Tax and Incentive Agreement by and among the County and the Company with respect to the Project (the "Incentive Agreement"), the form of which is presented to this meeting, which Incentive Agreement is to be dated as of April 26, 2016, or such other date as the parties may agree; and

WHEREAS, it appears that the Incentive Agreement now before this meeting is in appropriate form and is an appropriate instrument to be executed and delivered by the County for the purposes intended.

NOW, THEREFORE, BE IT ORDAINED by the Council, as follows:

Section 1. As contemplated by Section 12-44-40(I) of the Negotiated FILOT Act, the findings and determinations set forth in the Inducement Resolution are hereby ratified and confirmed. In the event of any disparity or ambiguity between the terms and provisions of the Inducement Resolution and the terms and provisions of this Ordinance and the Incentive Agreement, the terms and provisions of this Ordinance and the Incentive Agreement shall control. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed thereto in the Incentive Agreement. Additionally, based on information provided to the County by the Company with respect to the Project, the County makes the following findings and determinations:

(a) The Project will constitute a "project" within the meaning of the Negotiated FILOT Act; and

(b) The Project, and the County's actions herein, will subserve the purposes of the Negotiated FILOT Act; and

(c) The Project is anticipated to benefit the general public welfare of the State and the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; and

(d) The Project gives rise to no pecuniary liability of the County or an incorporated municipality or a charge against the general credit or taxing power of either; and

(e) The purposes to be accomplished by the Project are proper governmental and public purposes; and

(f) The benefits of the Project are greater than the costs.

Section 2.

(a) The County hereby agrees to enter into the Incentive Agreement, which agreement shall be in the form of a fee agreement, pursuant to the Negotiated FILOT Act, whereby the Company will agree to satisfy, or cause to be satisfied, certain investment requirements with respect to the Project within certain prescribed time periods in accordance with the Negotiated FILOT Act and the County will agree to accept certain negotiated FILOT payments with respect to the Project (the "Negotiated FILOT"), as set forth in **Section 2(b)** hereof and in accordance with the terms of the Incentive Agreement.

(b)

(i) The Negotiated FILOT shall be determined using: (1) an assessment ratio of 6%; (2) the lowest millage rate or millage rates allowed with respect to the Project pursuant to Section 12-44-50(a)(1)(d) of the Negotiated FILOT Act as set forth in greater detail in the Incentive Agreement, and which, based on the property comprising the Land as of the original execution and delivery of the Incentive Agreement, the County and the Company believe to be 310.4 mills, and which millage rate or rates shall be fixed in accordance with Section 12-44-50(A)(1)(b) of the Negotiated FILOT Act for the entire term of the Negotiated FILOT, all as set forth in greater detail in the Incentive Agreement; (3) the fair market value of such Negotiated FILOT Property as determined in accordance with Section 12-44-50(A)(1)(c) of the Negotiated FILOT Act; and (4) and such other terms and conditions as are or will be specified in the Incentive Agreement including, but not limited to, that the Company and the Project shall be entitled to the maximum benefits allowable under the Negotiated FILOT Act with respect to the disposal and replacement of Project property.

(ii) The Negotiated FILOT shall be calculated as provided in this **Section 2(b)** for all Negotiated FILOT Property placed in service as part of the Project during the Investment Period. For each annual increment of investment in Negotiated FILOT Property, the annual Negotiated FILOT payments shall be payable for a payment period of thirty (30) years. Accordingly, if such Negotiated FILOT Property is placed in service during more than one year, each year's investment

during the Investment Period shall be subject to the Negotiated FILOT for a payment period of thirty (30) years up to an aggregate of thirty-five (35) years or, if the Investment Period is extended as set forth in the Incentive Agreement, up to an aggregate of forty (40) years.

Section 3. The County hereby represents and acknowledges that the property comprising the Land as of the original execution and delivery of the Incentive Agreement is located within the boundaries of the Multi-County Park established pursuant to the Multi-County Park Act and Article VIII, Section 13(D) of the State Constitution. The County agrees to designate the Project as part of the Multi-County Park, if not already so designated, and agrees to maintain the Project within the boundaries of the Multi-County Park on terms which provide for all jobs created at the Project from January 1, 2016 through the end of the Investment Period, any additional jobs tax credits afforded by the laws of the State for projects located within multi-county industrial or business parks, and on terms, and for a duration, which facilitate the County's provision, and the Company's receipt, of the Special Source Credits set forth in **Section 4** hereof.

Section 4. As an additional incentive to induce the Company to undertake the Project, and as reimbursement for investment in Special Source Improvements and subject to the requirements of the Special Source Act, the County hereby agrees, that each Credit Eligible Entity (as defined in the Incentive Agreement) shall be entitled to receive, and the County shall provide, Special Source Credits against each FILOT Payment due from each such Credit Eligible Entity with respect to the Project for a period of five (5) consecutive tax years, commencing with the tax year for which the initial Negotiated FILOT payment is due with respect to the Project, in an annual amount equal to eighty percent (80%) of the FILOT payment for the first tax year, seventy percent (70%) of the FILOT payment for the second tax year, sixty percent (60%) of the FILOT payment for the third tax year, fifty percent (50%) of the FILOT payment for the fourth tax year, and forty percent (40%) of the FILOT payment for the fifth tax year, all in accordance with, and as further detailed in, the Incentive Agreement. In accordance with the Special Source Act, the Special Source Credits authorized herein shall not, in the aggregate, exceed the aggregate cost of Special Source Improvements funded from time to time in connection with the Project.

Section 5. The form, provisions, terms, and conditions of the Incentive Agreement presented to this meeting and filed with the Clerk to Council are hereby approved, and all of the provisions, terms, and conditions thereof are hereby incorporated herein by reference as if the Incentive Agreement was set out in this Ordinance in its entirety. The Chairman of the Council is hereby authorized, empowered, and directed to execute the Incentive Agreement in the name and on behalf of the County; the Clerk to Council is hereby authorized, empowered and directed to attest the same; and the Chairman of the Council is further authorized, empowered, and directed to deliver the Incentive Agreement to the Company. The Incentive Agreement is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall not materially adversely affect the rights of the County thereunder and as shall be approved by the official or officials of the County executing the same, upon the advice of counsel, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of the Incentive Agreement now before this meeting.

Section 6. The Chairman of the Council, the County Administrator, and the Clerk to Council, for and on behalf of the County, are hereby each authorized, empowered, and directed to do any and all things necessary or proper to effect the performance of all obligations of the County under and pursuant to the Incentive Agreement.

Section 7. The provisions of this Ordinance are hereby declared to be separable and if any section, phase, or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phases, and provisions hereunder.

Section 8. All orders, ordinances, resolutions, and parts thereof in conflict herewith are to the extent of such conflict hereby repealed. This Ordinance shall take effect and be in full force from and after its passage and approval.

[End of Ordinance]


Enacted and approved, in meeting duly assembled, this 26th day of April, 2016.

Kershaw County, South Carolina



By: 
Kershaw County Council

Attest:

By: 
Merri Seigler, Clerk to County Council,
Kershaw County, South Carolina

First Reading: March 8, 2016
Second Reading: April 12, 2016
Public Hearing: April 26, 2016
Third Reading: April 26, 2016